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Supreme Court of The United States

October Term, 1959

No. 222

HELEN COVINGTON, et al.,

Petitioners,

vs.

J. S. EDWARDS, SUPERINTENDENT OF SCHOOLS OF MONTGOMERY COUNTY, NORTH CAROLINA, et al.,

Respondents.

BRIEF OF RESPONDENTS, MEMBERS OF THE NORTH CAROLINA STATE BOARD OF EDUCATION, IN OPPOSITON TO PETITION FOR WRIT OF CERTIORARI.

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STATEMENT OF THE CASE ON BEHALF OF RESPONDENTS, MEMBERS OF THE NORTH CAROLINA STATE BOARD OF EDUCATION.

In order to understand the position of the Respondents, Members of the North Carolina State Board of Education, it is necessary to state the facts from the standpoint of these Respondents.

This action was originally instituted in the District Court of the United States for the Middle District of North Carolina by these Petitioners against J. S. Edwards, Superintendent of Schools of Montgomery County, North Carolina, and against the Members of the Montgomery County Board of Education. It should be emphasized that these Respondents, Members of the North Carolina State Board of Education, were not made parties defendant (R-5a, Appendix Appellants' Brief CCA). It should further be noted that the Petition mentioned by the Petitioners on p. 3 of the Petition filed before

this Court was filed on September 7, 1954, and was directed to the Superintendent and Board of School Trustees of the Montgomery County, North Carolina, Public Schools, and was not directed to these Respondents.

On p. 36a of the Appendix to Apellants' Brief filed in the Circuit Court of Appeals for the Fourth Circuit will be found the Motion of the Petitioners for Leave to File Amended and Supplemental Complaint and Add Parties Defendant, and on p. 39a of the Appendix to Appellants' Brief filed in the Circuit Court of Appeals for the Fourth Circuit will be found the Proposed Amended and Supplemental Complaint.

There is filed as an Appendix to this Brief the Special Appearance of the State of North Carolina in behalf of the Members of the State Board of Education in Opposition to Motion of Petitioners to File Supplemental Complaint and Make Additional Parties Defendant (see Appendix this Brief, p. 4).

ARGUMENT

If the Court will refer to p. 5 of this Petition for Writ of Certiorari now pending before this Court it will be seen that the Petitioners say in Footnote No. 4 the following:

> "The supplemental complaint would have made state education officials parties defendant. That aspect of the case is not brought here by this petition."

Reference is made to the Opinion of the District Judge of the United States District Court, beginning on p. 24 of the Appendix to this Petition and especially on p. 26, for the holding that the Respondents, Members of the North Carolina State Board of Education, were not necessary or proper parties. Reference is made to the Judgment of the District Court of the United States on p. 55a of Appendix to Appellants' Brief CCA for the Decree of Dismissal; and reference is further made to the Opinion of the United States Court of Appeals for the Fourth Circuit on pp. 29, 34, for the decision of that Court showing that the Respondents, Members of the North Caro-

lina State Board of Education, should not be joined in this action.

This statement is, therefore, filed with this Court for the purpose of emphasizing that the Petitioners claim no relief as against these Respondents. This statement would not have been filed except for the fact that the Petitioners served copy of this Petition upon the Attorney General.

Respectfully submitted,

MALCOLM B. SEAWELL
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RALPH MOODY
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Justice Building
Raleigh, North Carolina

Counsel for the Respondents, Members of the North Carolina State Board of Education.

APPENDIX

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

Rockingham Division

HELEN COVINGTON, ET ALS, Plaintiffs, vs. J. S. EDWARDS, SUPERINTENDENT OF SCHOOLS OF MONTGOMERY COUNTY, AND BOARD OF EDUCATION OF MONTGOMERY COUNTY, Defendants.	CIVIL NO. 323-R

SPECIAL APPEARANCE OF STATE OF NORTH CAROLINA IN BEHALF OF STATE BOARD OF EDUCATION AND STATE SUPERINTENDENT OF PUBLIC INSTRUCTION IN OPPOSITION TO MOTION OF PLAINTIFFS TO FILE SUPPLEMENTAL COMPLAINT AND MAKE ADDITIONAL PARTIES DEFENDANTS.

To the Honorable, the Judge of the District Court of the United States for the Middle District of North Carolina:

The State of North Carolina, appearing by George B. Patton, Attorney General of North Carolina, in behalf of the State Board of Education and the State Superintendent of Public Instruction, said appearance being especially made for the purpose of opposing the proposed Motion of Plaintiffs to file Supplemental Complaint and to make additional parties defendants, as shown in said Motion filed herein, the same not being a general appearance, Now moves the Court that said Motion filed September 13th, 1956, be disallowed and dismissed for the reasons following:

(1) That this action was brought by the Plaintiffs against the Board of Education of Montgomery County and the Sup-

erintendent of Schools of Montgomery County and all pleadings have been duly filed and appear in the record of the case; that as against the above Defendants the Plaintiffs seek an interlocutory and permanent injunction declaring Article IX, Sec. 2, of the Constitution of North Carolina, and any customs, practices and usages requiring segregation in public schools to be declared to be in violation of the 14th Amendment; that Defendants be required to present a plan of desegregation for Montgomery County, and restraining and enjoining any further segregation as to Plaintiffs and all others in the same situation.

(2) That it is alleged in the Plaintiffs' Motion, now under consideration, that subsequent to the filing of the Complaint and Amendments Article IX of the Constitution of North Carolina has been amended so as to authorize education expense grants and to authorize local option for the purpose of suspending the operation of public schools; it is further alleged that the General Assembly of North Carolina has rewritten and amended Chapter 115 of the General Statutes of North Carolina, and especially Articles 21, 34, 35 of said Chapter 115, relating to the assignment and enrollment of pupils in the public schools, providing local option for the suspension of the public schools, and providing education expense grants for children attending non-public schools; it is also alleged in said Motion (a) that because of these Constitutional and Statutory changes the cause of action is materially affected and in order to prevent a multiplicity of suits it is necessary to set forth these changes in the pleadings; and (b) that the State Board of Education and the State Superintendent of Public Instruction have now become necessary parties.

(3) That the State Board of Education is an agency of the State of North Carolina and exercises such powers and duties as are set forth in Article 2 of Chapter 115 of the General Statutes (Cumulative Supplement of 1957); that the State Superintendent of Public Instruction is a Constitutional Officer of the State of North Carolina and exercises such powers and duties as are set forth in Article 3 of Chapter 115 of the General Statutes (Cumulative Supplement of 1957).

(4) That the State Board of Education and the State Superintendent of Public Instruction are not indispensable parties defendants to this action since they do not belong in the class of parties defendants without whom the action cannot proceed, nor do they have such an interest in the subject-matter of the controversy that final decree cannot be made without affecting their interests; that the State Board of Education and the State Superintendent of Public Instruction are not necessary parties defendants, nor are they essential parties defendants, nor are they desirable parties defendants, since they do not have any interest in this controversy nor do they even have a separable interest which would be directly or indirectly affected by any decree entered in this action; that the Plaintiffs in this action can have complete relief, if they are entitled to any relief at all, against the persons, officials and agencies which are already parties defendants in this action; that if the Plaintiffs are entitled to any relief at all they can obtain a decree from the Court which will be full, complete, adequate, valid and final and without any possible fear that said decree will subsequently be rendered nugatory by any action on the part of the State Board of Education or the State Superintendent of Public Instruction.

(5) That the State Board of Education and the State Superintendent of Public Instruction do not even have the status of proper parties or formal parties in the subject-matter of this action; that these proposed parties defendants not only do not have any interest in the controversy between the immediate litigants, but they do not have such an interest in the subject-matter that can even be conveniently adjudicated in this action for the purpose of preventing further or future litigation.

(6) That the allegations in the proposed Supplemental Complaint, attached to the Motion here under consideration, cannot displace, alter or change the authority, lack of authority, rights, duties and legal relations of the parties to this action or the proposed parties defendants as defined and fixed by valid constitutional provisions and statutes of the State of North Carolina; that in view of controlling, valid and applic-

able constitutional provisions and the statutes of the State of North Carolina the allegations of the proposed Supplemental Complaint do not and cannot legally state any cause of action against the State Board of Education and the State Superintendent of Public Instruction, the proposed additional parties defendants under the Motion, for that: (1) the proposed additional parties defendants are not by law charged with any duties with respect to the local option statutory plan of closing or suspending the operation of public schools (Article 34 of Chapter 115 of the General Statutes—Cumulative Supplement of 1957), nor do they have any lawful authority or control over the administration of said plan or statute; (2) that Plaintiffs do not allege in their proposed Supplemental Complaint that any election has been held or proposed or called under the provisions of said statute, or that any administration of said statute or article has been made or is about to be made which in anywise results in any discriminatory or any unconstitutional application to the Plaintiffs or their rights; (3) that none of the Plaintiffs, therefore, either individually or as a group, belong to any class of persons who have in anywise been discriminated against or deprived of any rights in an unconstitutional manner under such statute, or acting under color of same, or by reason of any administration of same, and, therefore, Plaintiffs do not have sufficient status and are not in a position to attack the constitutionality of said article or statute; (4) that as to Article 35 of Chapter 115 of the General Statutes, Cumulative Supplement of 1957, dealing with Education Expense Grants, there is no allegation in the Complaint that the Plaintiffs have been discriminated against in any manner or deprived of any constitutional rights by reason of said article or statute or any administration of same, and, in fact, no grant of funds has yet ever been made to any person or individual by reason of said article or statute; the Plaintiffs, therefore, do not belong to any class or group of persons affected by such statute and are not in any position and have no legal status to attack the constitutionality of said statute; (5) that the State Superintendent of Public Instruction is not charged with any administration of education expense grants and has no duties in regard to same, and the State Board of Education does not

determine the eligibility of any child or pupil for any grant, being charged only with the duty of determining the maximum amount of the grant to be made available to each child; (6) that as to the assignment and enrollment of pupils provided by Article 21 of Chapter 115 of the General Statutes (Cumulative Supplement of 1957) the said article has been declared to be constitutional on its face by the United States Court of Appeals for the Fourth Circuit, and petition, or application, for certiorari made to the Supreme Court of the United States has been denied; that Plaintiffs never have at any time complied with said Article 21 and there has been no administration or application under the provision of said statute to these Plaintiffs, and, therefore, Plaintiffs are not in a position and do not have such legal status as is required for the purpose of attacking the constitutionality of the said statute, and Plaintiffs have not been discriminated against in an unconstitutional manner nor have they been deprived of any constitutional rights flowing from or under the provisions of said Article 21; (7) that the State Board of Education and the State Superintendent of Public Instruction are not charged with any duties, have no authority and do not exercise any control whatsoever with respect to the administration of said Article 21 and have never exercised or assumed the right to exercise any duties or authority with respect thereto, but, to the contrary, said Article 21 is administered by other officials and bodies exercising rights directly conferred by the General Assembly of North Carolina; (8) that the allegations of the Supplemental Complaint proposed to be filed by virtue of the Motion now under consideration does not state any cause of action or any legal grounds or foundation for a cause of action against the State Board of Education or against the State Superintendent of Public Instruction, either one or both.

(7) That this appearance is made by the Attorney General of North Carolina in behalf of the State Board of Education and the State Superintendent of Public Instruction solely for the purpose of resisting Plaintiffs' Motion to file supplemental Complaint and make additional parties defendants.

WHEREFORE, the Attorney General of North Carolina moves the Court that the Plaintiffs' Motion be disallowed and dismissed and that the State Board of Education and the State Superintendent of Public Instruction shall not be made parties defendants in this action.

GEORGE B. PATTON
Attorney General of North Carolina

RALPH MOODY
Assistant Attorney General